

# INAUGURAL NATIONAL ACCESS TO JUSTICE AND PRO BONO CONFERENCE

MELBOURNE, 11 & 12 AUGUST 2006

## A REPORT



National Pro Bono Resource Centre



### The Conference

The inaugural National Access to Justice and Pro Bono Conference was held in Melbourne on Friday and Saturday 11 and 12 August 2006 and co-hosted by the Law Council of Australia and the National Pro Bono Resource Centre. It was a great success, with 240 practitioners from across the country attending the Conference. Attendees used the opportunity to engage in discussions, exchange information and opinions or network with other practitioners.

The Conference followed the success of two national pro bono conferences and recognised the commitment of the lawyers of Australia to the ideal of access to justice for all members of the community.



*At the Conference: Mr Robert Musgrove, Chief Executive of the Civil Justice Council of the Royal Courts of Justice in England; Mr Tim Bugg, President of the Law Council; Federal Attorney-General the Hon Philip Ruddock MP and Mr Mark Woods, Chairman of the Australian Legal Assistance Forum and the Law Council's Access to Justice Committee.*

The event featured keynote speakers including Chief Justice Murray Gleeson, the Federal Attorney-General Philip Ruddock MP, Mr Julian Burnside QC and the Chief Executive of the Civil Justice Council of the Royal Courts of Justice in England, Mr Robert Musgrove.

The Law Council and the National Pro Bono Resource Centre wish to note their gratitude to the Attorney-General's Department (the primary sponsor of the Conference), the Law Institute of Victoria, the Australian Legal Assistance Forum, the Law Council's Family Law Section, Farrar Gesini & Dunn, Baker & McKenzie, Mallesons Stephen Jaques and Phillips Fox for their kind support and sponsorship of the Conference.

## Overview of the Program

Due to the Law Council's liaison and close relationship with the National Pro Bono Resource Centre in planning the Conference, a very interesting and comprehensive program was developed by the Law Council's Access to Justice Committee and the Centre, with assistance from the Law Institute of Victoria and National Legal Aid, for the participants of the Conference.



*Met at the Conference: Mr Mark Woods, Chairman of the Australian Legal Assistance Forum and the Law Council's Access to Justice Committee, and Mr Frank Guivarra, Chief Executive Officer - Victorian Aboriginal Legal Service and former Chairman of the Australian Legal Assistance Forum.*

Ensuring access to justice for Australians has been a goal of the Law Council for decades. To this end, it lobbies Governments on justice issues and works with the Courts and other bodies to improve the justice system. The Law Council believes the provision of justice to the Australian community is fundamental to the acceptance of the rule of law and to the stability of the community at large. To reflect the Law Council's point of view, the Conference program focused not only on access to justice and pro bono issues, but also on their inter-relationship. Topics covered integrated legal aid issues, pro bono practice, human rights, crime and punishment, relationships and civil justice.

Chief Justice Gleeson opened the Conference and was received enthusiastically by participants. He emphasised the importance of all Australians having ready and equal access to legal advice and said the issues of legal costs, legal aid and pro bono resources went "right to the heart" of access to justice. Chief Justice Gleeson was followed by Melbourne barrister Julian Burnside QC, who urged the legal profession to ensure that the Australian community has the right and opportunity to access the justice system.

Major Sessions of the Conference included panel sessions on unmet legal aid and the high price of litigation. The Honourable Wayne Martin, Chief Justice of Western Australia, reviewed various systems which may be utilised to bridge the gap between the cost of litigation and the capacity of litigants to afford

those costs. He also outlined steps that may be taken by courts to reduce the time and expense of litigation and thereby make litigation more affordable.

Mr Robert Musgrove, Chief Executive of the Civil Justice Council of the Royal Courts of Justice in England, described the English system and noted that meeting unmet legal need through pro bono work should be stimulated by the ability to recover costs and by addressing the core of the issue by developing better public legal education programs and earlier advice intervention.



*From left to the right: Law Council President Mr Tim Bugg; Ms Kate McMillan SC from the Victorian Bar; the Hon Chief Justice Wayne Martin and Mr Glenn Martin SC, President of the Australian Bar Association.*

It was also apparent that Rule of Law sessions were highly attended by practitioners. Dr Joo-Cheong Tham, Senior Lecturer from the Melbourne Law School, identified two features of Australian anti-terrorism laws passed since the September 11 attacks that undermine access to justice and Philip Lynch from the Public Interest Law Clearing House discussed the development and operation of the Human Rights Law Resource Centre, the first specialist human rights legal service in Australia.

Family law also had a big impact on attendees with discussions on the newly established Family Relationship Centres and collaborative justice. Dr Andrew Bickerdike from Relationships Australia outlined the types of services the Family Relationship Centres will provide and the demands and challenges that will face the centres in the future. Olivia Gesini, Partner of Farrar Gesini & Dunn Family Lawyers, which was a sponsor of the Conference, introduced participants to collaborative law and outlined its difference from mediation. Ms Cathy Gale, President of the Law Institute of Victoria, spoke also at this session. Collaborative law blends the principles of mediation with the skills and knowledge of lawyers and is ideally suited to family law which requires practical outcomes for the parties to enable them to move forward to the next phase of their life.



*More attendees: Mr John Corker, CEO of the National Pro Bono Centre; Ms Margery Nicoll from the Law Council; Mr Ian Govey, Deputy Secretary of the Attorney-General's Department and Mr Rick Cullen from the Law Council's Access to Justice Committee.*

A major part of the Conference was dedicated to legal aid issues. Attendees discussed the current situation, indigenous legal aid and how to improve legal aid in rural and remote areas.



*Discussed legal help in the bush: Mr Tim Bugg; Mr Mark Woods; Senator the Hon Ian MacDonald and Mr Pat Mullins, member of the Law Council's Access to Justice Committee.*

Richard Coverdale from Rural Law Online explored a model for the delivery of legal information to rural communities. The Rural Law Online website was developed by the Victorian Law Foundation in recognition of the limited access to legal information experienced by rural Victorians. This website demonstrates a viable and flexible model for the delivery of legal information through collaboration across organisations, industry, individuals and at a local, state and national level. Attendees further discussed whether tenders for indigenous legal aid services will improve the system. The differences in eligibility for legal aid across the country were also discussed and whether uniformity is desirable and achievable.

Another big issue discussed was legal costs in legal aid work. Attendees ascertained areas of case work for which funding is not available and noted that remuneration levels for available legal aid work do not maintain the retention of experienced practitioners. Consensus was reached that legal aid funding needs to be increased on a state and federal level.

The other major theme of the Conference was pro bono practice. One very popular session highlighted the problems experienced in pro bono practice. This session also included a debate on the concept and utility of setting pro bono targets for individual lawyers in various types of practice. Mr John North, Immediate Past President of the Law Council, Glenn Martin SC, President of the Australian Bar Association and Kate McMillan SC from the Victorian Bar were against "aspirational targets" whereas ABC Broadcaster and former lawyer Mr Jon Faine, Associate Professor Adrian Evans and Debbie Mortimer SC from the Victorian Bar supported "aspirational targets" for legal practitioners.

In the cooperative pro bono session, Mr Peter Seidel, Partner Arnold Bloch Leibler, and Uncle Henry Atkinson, Chair of the Yorta Yorta Nation Aboriginal Corporation Elders' Council, spoke on the history of the long term relationship between the Yorta Yorta peoples and Arnold Bloch Leibler. They outlined why and how the relationship has succeeded using the example of the Yorta Yorta

struggle for land justice through the Federal Court, Full Court of the Federal Court and the High Court.



*Spoke at the “Bailing out: What happened to the golden thread?” session: The Hon Justice Terry Connolly from the ACT Supreme Court; Mr Nicholas Cowdery QC, Director of Public Prosecutions in NSW, and Mr Stephen Shirrefs SC from the Victorian Bar.*

Another very interesting session discussed crime and punishment issues. Topics included confiscation and forfeiture, victim’s compensation, bail and the legal system and indigenous offenders.

The Hon Justice Terry Connolly from the ACT Supreme Court discussed bail and the presumption of innocence and Mr Michael O’Connell, Victims of Crime Coordinator in South Australia, outlined the effects of crime for victims and the effects of victims’ compensation in Australia.

The last stream of the Conference included civil justice issues. The “WorkChoices – It’s off to court we go” session was very well received and Ms Rachel Doyle from the Victorian Bar addressed access issues under the newly introduced WorkChoices legislation.

Another topic was tort law reform. The Law Council has done significant work to bring this matter back on the agenda of the Attorneys-General. Ms Elenore Eriksson and Mr Bill Redpath from the Law Council of Australia gave a presentation on the reflections on the tort law debate and access to justice issues which was very well received by the attendees. It was noted that the law governing personal injuries rights and entitlements rests with State and Territory governments. These laws can be broken down into work injury, motor vehicle injury and other civil liabilities. The most recent wave of tort law reform has largely affected the civil liabilities area, particularly public liability and medical negligence.

On a more entertaining side, members of Melbourne’s Greek legal community performed a theatre style play entitled “*The Greek Court*”. It showed how difficult it can be for lawyers and defendants alike if they do not speak the local language.



*Members of the Greek Court, including “Justice” Olyvia Nikou SC (middle).*

The “Justice” of the Greek Court, Ms Olyvia Nikou SC, and her team only spoke Greek and the defendants, including Family Law Section Chair Mr Ian Kennedy AM, the Law Council’s Immediate Past President Mr John North and Law Society of South Australia President Ms Deej Eszenyi, seemed to have no idea as to what was happening. Thankfully, after more than an hour of discussion, fact finding and communication with hands and feet, “Justice” Nikou was more or less convinced that all defendants were not guilty and they were allowed to leave the court without being charged!



*Had to defend himself in the Greek Court: Mr Ian Kennedy AM, Chair of the Family Law Section of the Law Council of Australia.*

## **Launch of National Civil Legal Aid Scheme**

Law Council President Mr Tim Bugg launched the proposal for a National Civil Legal Aid Scheme at the Conference. In front of all attendees, Mr Bugg urged the delegates to endorse the policy for a national civil legal aid program and recommend the policy for in principle adoption by all constituent bodies.

## **Papers and Presentations**

The following Conference papers and presentations are available for download (please click on the links below):

[Opening address](#) by Chief Justice Murray Gleeson, Chief Justice of the High Court of Australia

[Some reflections on 30 years of a National Legal Aid Scheme](#) by Dr Don Fleming, Lecturer, University of Canberra

[Golden thread or tattered fabric – bail and the presumption of innocence](#) by Justice Terry Connolly, Supreme Court of the Australian Capital Territory

[Cooperative Pro Bono: finding and keeping partners: Cancer Patients’ Legal Service](#) by Ms Elizabeth Ballinger, Head of Social Work Department, Peter MacCallum Cancer Centre and Ms Jennifer McVicar, Director, Pro Bono & Community Service, Baker & McKenzie

[Victoria’s New Charter of Rights and Responsibilities: a preliminary assessment](#) by Professor Spencer Zifcak, La Trobe University

[Collaborative Law](#) by Ms Olivia Gesini, Partner, Farrar Gesini & Dunn

[The Operation of the Confiscation Act 1997 \(Victoria\)](#) by Mr Jim Kennan SC, Barrister, Victorian Bar

[The Agenda for Civil Justice Reform – The English Experience – Evolution of an improved Justice System, or disguising a Curate’s Egg?](#) by Mr Robert Musgrove, Chief Executive, UK Civil Justice Council

[Family Relationship Centres](#) by Mr Ian Kennedy AM, Chair, Family Law Section, Law Council of Australia

[Family Relationship Centres](#) – the first 40 days by Dr Andrew Bickerdike, Relationships Australia

[The high cost of litigation – how to cover the gaps](#) by Mr Robert Musgrove, Chief Executive, UK Civil Justice Council

[Legal costs in legal aid work – muzzle not the ox](#) by Mr Bill Grant, Chief Executive Officer, Legal Aid Commission of New South Wales

[Engaging law firm leaders in pro bono and maintaining lawyers’ interest](#) by Ms Jennifer McVicar, Director, Pro Bono & Community Service and Mr Kenneth Gray, Partner & Real Live Law Firm Leader, Baker & McKenzie

[Cooperative pro bono: finding and keeping partners](#) by Mr Tony Woodyatt, Adjunct Senior Lecturer, Griffith Law School and Ms Belinda Abey, Pro Bono Solicitor

[Reflections on the Tort Law Debate and Access to Justice](#) by Mr Bill Redpath, Tort Law Committee, Law Council of Australia, and Ms Elenore Eriksson, Tort Law Committee, Law Council of Australia

[Tort Law in Victoria](#) by Mr Paul Henderson, Solicitor and Partner, Slater and Gordon

[Changes to unfair dismissal laws](#) by Mr Val Gostencnik, Partner, Workplace Relations Group, Corrs Chambers Westgarth

[Unmet legal need: how to identify and meet it](#) by Mr Geoff Mulherin, Director, Law and Justice Foundation of New South Wales

[Victims’ compensation – repairing the harm](#) by Mr Michael O’Connell, Victims of Crime Coordinator, South Australia

[National standards, workplace agreements and alternative dispute resolution: new flexibility or new chaos?](#) by Ms Rachel Doyle, Barrister, Victorian Bar

## Next Conference

As this Conference proved to be very successful, the Law Council will be discussing with the National Pro Bono Resource Centre the possibility of holding another National Access to Justice and Pro Bono Conference in 2008.

## Members of the Law Council's Access to Justice Committee

Mr Mark Woods (Chair)	Law Institute of Victoria
Mr Duncan Allan QC	Victorian Bar
Mr Ben Salmon QC	ACT Bar
Ms Kay Barralet	Law Society of the ACT
Mr Chris Whitelaw	New South Wales Bar
Mr John North	Law Society of the New South Wales
Mr Pat Mullins	Queensland Law Society
Mr Gary Long SC	Queensland Bar
Mr Tony Whitelum	Law Society of the Northern Territory
Ms Deej Eszenyi	Law Society of South Australia
Mr Simon Brown	Law Society of Tasmania
Mr Rick Cullen	Law Society of Western Australia
Mr Denis Farrar	Family Law Section Representative

### Secretariat Staff

Ms Margery Nicoll	Director (International)
Mr Hendryk Flaegel	Administrator



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